



Development	Demolition of buildings, construction of a supermarket, office, staff accommodation, alterations to existing canopy and all associated site works.
Location	Kelly's Service Station, Millbrae, Chapel Street, Carndonagh, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	1751768
Applicant(s)	Charles Kelly Properties Ltd.
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant(s)	Monbro Developments Ltd.
Observer(s)	None
Date of Site Inspection	4 th June 2019
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The site of 0.715hectares is located on the southern periphery of Carndonagh – a large town on the Inishowen Peninsula. The site relates to a mixed-use site which includes a petrol station, ancillary shop which is adjoined by a vacant supermarket fronting the street and a warehouse/ yard to the rear which appears to be a fuel depot.
- 1.2. The site has road frontage of 95 metres which includes two separate access/egress points for the petrol station, an extensive open frontage from which the premises and a yard/fuel depot to the rear are accessed and a gated grass plot at the southern end. A stream (also referred to as a Brook in the documentation) traverses the site alongside the rear of the former supermarket premises from where it is culverted under the petrol station forecourt and road before discharging to the stream on the other side of the road northwest of the site. Access to the rear of the site is via a gated bridge over this river. The south of the site is adjoined by a row of dwellings.

2.0 Proposed Development

- 2.1. It is proposed to demolish the existing buildings known as Kelly's supermarket and Kelly's Service Station (retail premises) which have a stated total floor area of 673.78sq.m. and to rebuild a two storey premises with a total floor area of 827.2sq.m. to include a supermarket, ancillary storage, office and toilets on ground floor and ancillary storage and staff accommodation on first floor.
- 2.2. Other elements include: alterations to existing canopy (reduced size), additional car parking, loading and unloading area and connection to existing foul and storm water network. Part of the layout revisions include a drive-through route from the forecourt to the depot entrance within the site and along the site frontage between the building and public footpath, notwithstanding the planning authority's requests in this regard. It is also indicated that external seating area is to be provided outside the dining area.
- 2.3. Works include a new retaining wall and mesh fence on the western side of the existing stream between the culvert point and the bridge within the site. No alterations are proposed to the existing culvert layout through the forecourt. A flood risk assessment has been submitted as further information. Flood risk measures are proposed relating to the new building.

3.0 Planning Authority Decision

3.1. Decision

Following a request for information and clarification of same, the planning authority issued a decision to grant permission subject to 16 conditions.

Condition 1 and 3 - clarify scope of permission and require further drawings for clarity.

Condition 2 - requires flood management and mitigation measures in section 7.2 of report to be completed prior to commencement of commercial use, installation of new grid/grille system at the inlet of Ballyloskey Stream culvert (piped section) and installation of a new inspection chamber at the acute bend in the Ballyloskey Stream culvert (piped section). Exact details of all mitigation measures to be agreed prior to development.

Condition 4 - restricts vehicular movement: The raised paved/area/one-way system through from forecourt as identified to the front of the building shall be provided as a paved pedestrian area only and shall not be permitted to be used by vehicles travelling from the forecourt area to the car park at the southern side of the building.

Condition 5 - refers to traffic calming measures including narrowing of junctions and provision of pedestrian crossing.

Condition 6 - refers to construction management.

Condition 7 - refers to surface water management.

Condition 8 - refers to car parking and surface water

Condition 9 - limits use of retail unit to convenience goods as defined in Retail planning guidelines or as shop in PDR.

Condition 10 requires priority to Irish language in signage and omission of plastic and internally illuminated box fascia signs or similar.

Conditions 11 and 12 - refer to lighting of premises, site and street.

Condition 13 - refers to finishes.

Condition 14 - refers to extractor points, noise levels, loading bay sizes and waste management.

Condition 15 - refers to fire hydrant.

Condition 16 - refers to disabled access.

3.2. Planning Authority Reports

3.2.1. Planning Reports

There is no issue in principle with what is effectively the redevelopment of the site. However, the site is partially located in a flood zone. There are also concerns about the set back from the street, elevational design/materials and car parking which are all required to be revised in the interest of enhancing the streetscape. Further information was sought in respect of these matters. While the revised building design is generally acceptable subject to modifications, the applicant failed to adequately address matters in relation to car parking and layout, access, flood risk and drainage.

Clarification was then sought in respect of these outstanding matters:

- The subject site is situated in a Flood Zone A and accordingly it is required that a Flood Risk Assessment, Surface Water Drainage Calculation and Justification Test be submitted in accordance with policies F-P-2 and F- P-3 of the Donegal County Developemtn Plan 2018-2024. The subject site has a high probability of Flooding ad it is a policy of the Council not to permit development where flood or surface management issues have not been or cannot be addressed successfully and/or where the presence of unacceptable residual flood risks remain for the development, its occupants and/or property or public infrastructure elsewhere including inter alia, downstream (Policy FP4 refers) Due to the lack of information submitted the PA cannot be satisfied that the proposed developemtn is in compliance with FP 4.
- The revised car parking provision must accord with the standards of Table 6 of Appendix 3 of the Development plan. Detailed calculation ins in this regard should eb provided and it must also be demonstrated that all car park spaces can be conveniently utilised by customers. This should be accurately illustrated on revised plans.
- Narrowing of all points of entry /exit to the site (serving the forecourt area) are required together with the provision of informal pedestrian crossings at these points to include the provision of dropped kerbs and tactile paving. This should be accurately illustrated in revised plans.

- Revised plans should identify access/exit for HGVs and loading area as was originally provided on drawings 0517/PL01
- Revised drawings considered generally acceptable however treatment of northern section of the front elevation requires modification. Revised floor plans and section must also be included.

3.2.2. Revised notices were sought following the submission of significant information lodged on 17th October 2018 and comprising a FRA, Drainage Assessment and Justification Test and revised drawings.

All matters were addressed to the satisfaction of the planning authority.

3.2.3. Road Engineer Reports

Road Design (30th November 2017)

- The site is located in an area which is at a high risk of flooding from the Glentogher River. FRA required.
- Applicant to consider reducing entrance width on northern side to new proposed development to allow pedestrians cross safely and to ensure safe in/out arrangements are effective.
- Location and Storm Water Connection into existing roadside drain to be agreed with area engineer.

Road Design (30th October 2018)

- Matters still outstanding re narrowing of entrance/exit points, pedestrian crossing, dropped kerbs and tactile paving

EE Roads Cardonagh (30th October 2018)

- unsure about cause of flooding

3.2.4. Other reports

CFO: No objection subject to conditions

EHO No objection subject to conditions

3.3. Prescribed Bodies

Irish Water: No report

OPW: Not referred

3.4. Third Party Observations

3.4.1. Letter of objection lodged and issues relate to:

- flooding

4.0 Planning History

PA ref 96/1418 refers to permission for the petrol station development on site.

5.0 Policy Context

5.1. Development Plan

5.1.1. The town is a tier 2 settlement area.

5.1.2. Section 5.4 refers to flooding and risk and the requirement for flood protection levels for developments. In this regard the stated Aim is: To manage development proposals within flood risk areas in a sequential manner based on avoidance, substitution, justification and mitigation and to otherwise ensure that flood risks can be managed to an acceptable level without increasing flood risk elsewhere. Policies F-P 1 to 7 inclusive all refer to the need for flood risk assessments and or surface water calculations by developers and the need for a justification test in urban areas as part of its development control policies.

- FP4: It is a policy of the Council not to permit development where flood or surface water management issues have not been, or cannot be, addressed successfully and/or where the presence of unacceptable residual flood risks remain for the development, its occupants and/or property or public infrastructure elsewhere including, inter alia, up or downstream.
- FP5: It is a policy of the Council to promote the use of Sustainable Urban Drainage Systems (SUDs), flood attenuation areas, the controlled release of surface waters and use of open spaces and semi permeable hard surfaces for appropriate development proposals.
- FP7: It is a policy of the Council not to permit developments which would hinder the maintenance of river or drainage channels.

5.2. The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)

These guidelines advise the following approach to development:

- Adopt a precautionary approach to flooding.
- Set out a Sequential approach for the management of development in areas at risk from flooding which can be broadly summarised as follows:
 - Avoid development in locations at risk from flooding.
 - Substitute a land use/development that is less vulnerable to flooding where avoidance is not possible.
 - Justify the proposed land use/development in accordance with a specific Justification Test where avoidance and substitution are not possible.
 - Mitigate any residual flood risks arising from the development to an acceptable level where the development has passed the justification test.
 - Require the preparation of Strategic Flood Risk Assessments (SFRA) to; identify Flood Risk Areas, assess existing flood infrastructure, identify possible flood defence measures.
 - Identify the following hierarchy of Flood Risk Areas and categories of Vulnerable Development through which to apply the Sequential Test.

Zone A – High probability of flooding, i.e.) more than 1% probability or 1 in 100 from rivers and more than 0.5% probability or 1 in 200 from coastal flooding.

Zone B – Moderate probability of flooding, i.e.) between 0.1% probability or 1 in 1,000 years and 1% or 1 in 100 years for river flooding and between 0.1% or 1 in 1,000 year and 0.5% or 1 in 200 for coastal flooding.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development which relates to the redevelopment of an urban site, the nature of the receiving environment which includes a culverted stream within and downstream of the site, the proposed measures arising from the flood risk assessment and proximity to the nearest sensitive locations, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The matters raised by the appellant refer to the conditions of permission relating to flooding rather than the principle of development to which there is no objection.

6.2. Applicant Response

- Response late

6.3. Planning Authority Response

- No further comments

6.4. Observations

- none

7.0 Assessment

7.1. This appeal relates principally to a proposal to redevelop the retail element of a site hosting a number of uses - the primary one being a petrol station/fuel depot. While the overall site is included in the application and there is substantial redevelopment of the buildings, there are no proposed changes to the rear fuel depot yard and its premises nor to the forecourt pumps or tanks, while changes to the canopy area relate to its reduction in area. The appellant is concerned about the manner in which flooding has been addressed but is however not opposed in principle to the development. While there are concerns relating to drainage/ flooding and streetscape, the planning authority is however similarly not opposed to the principle of development given the notable absence of any considerable increase in a previously established retail use on the site.

7.2. Having inspected the site and environs and having regard to the submissions on file, the salient issues arising relate to drainage and flooding. In respect of streetscape issues, I consider the more finely grained elevational treatment as revised by the applicant together with the restriction of vehicular through-access within the site to be appropriate to the streetscape. In view of the substantial absence of conflict with the principle of development between the parties and with the development plan land

use objectives generally, the assessment can be substantially confined to the matters of drainage and flooding.

- 7.3. In this case the site is in a flood plain and requires a flood risk assessment.
- 7.4. The main source of flood risk is fluvial (Ballyloskey Stream) which traverses the site partly through a culvert. Significantly, the stream traverses the site alongside the rear of the existing supermarket building but is culverted through the remainder of the site under the forecourt and under the road at the northern end of the site before discharging from an outlet pipe back into the stream.
- 7.5. The appellant is most concerned about flooding and most notably, the impact of the culvert (whether through design or management) on pattern of flooding upstream. The appellant stated in a previous submission that 'we are aware from previous experience that the 'corrugated piped culvert section' is the problem (even unobstructed and with no grille) as it simply cannot cope with the brook in a flood scenario.' The council engineer's report on file refers to a sharp bend in the culvert and the use of a manhole but is not definitive about the cause or adequacy of existing culvert and drainage arrangements.
- 7.6. The applicant was requested to submit drainage calculations which incorporate detailed proposals for the management of storm/water run-off within the site and which demonstrate the adequacy of the existing piped section to accommodate the flow of storm water via the Stream traversing the site. In this regard the applicant was advised to consult with the Roads Department to scope a response and was advised that, at a minimum, measures would be required to prevent debris accessing the culvert and also to provide for an access point for culvert inspection and cleaning. In the applicant's initial response, the agents state that the clients had issues with the request for a flood risk report and drainage measures required as there is no increase in surface water-run-off and the culvert in situ was installed in accordance with the requirements 20 years ago, although there is agreement to cleaning out and access
- 7.7. The applicant's case appears to be such that the drainage proposals under consideration should essentially be confined to that serving the minimal additional building and not the forecourt. However, in response to the issues raised in the requests for further information in this regard, it is proposed to provide flood mitigation measures and a separate route for surface water. It is proposed to provide 24.9m³ of attenuation storage on site through a combination of pipe and 'Aquacell'

storage. It is proposed to use an oversized pipe and associated drainage gully to be built into the redevelopment routing any potential flood water from the Stream around the southern and western periphery of the site ultimately being discharged back into the Stream downstream of the site via a flow control manhole. The recommended flood mitigation measures include a CCTV camera and or a level sensor to monitor water levels immediately upstream of the culvert. FFL to be 33m AOD minimum in addition to the use of permeable paving along the vehicular access road and car park in order to allow some infiltration of surface water although surface details or section details are not indicated in drawings.

- 7.8. Critically the scope of the FRA report states that the details of the drainage arrangement in situ is beyond the remit of the application for the proposed development and goes on to state in its conclusions on page 18 that the proposed development is expected to result in the betterment of flood risk to the site and surrounding land assuming the current drainage proposals and recommended measures are implemented. The planning authority appears satisfied with the general approach and does not specifically seek any rerouting or resizing of the culvert although does not necessarily rule it out in its reference to implementation of measures 'at a minimum'.
- 7.9. I do not agree that the overall drainage of the petrol station site should be excluded from consideration. The proposal involves a sizeable redevelopment of the site with the construction of the forecourt retailing and ancillary storage areas alongside the stream. Drainage should be addressed comprehensively and not in a piecemeal approach. I do not therefore consider the development impacts can be dissociated from the existing culvert arrangement on site.
- 7.10. While the applicant defends the culvert arrangement on the basis of 20-year old compliance standards, this does not preclude the overall drainage arrangement from assessment in a subsequent proposal. I do not consider this unreasonable having regard to the scale of proposed development of 827 sq.m., revised site layout and site works, the Flood Area B location of the site, the experience of flood events and also changes in circumstances since 1996 when the previous development was assessed. Notably since installation of the old culvert, new guidelines regarding flooding and drainage demand a more stringent approach.
- 7.11. Accordingly, I consider it reasonable that permission be conditional on the upgrading of the culvert to serve the proposed development such that it is fit for purpose by current standards and in order to control the risk of flood.

7.12. I also note a new retaining wall is to be constructed on the bank of the Stream which is presently an earthen and grass bank. While this will offer some protection to the proposed new building from localised flooding of the Stream, it may exacerbate the upstream situation as well as reducing SUDs. The shifting of the building in the direction of the road away from the Stream will afford more flexibility in surface water management. Finally, the grassed area on the southern end of the site should be similarly landscaped to maintain SUDs. This could be dealt with by condition.

7.13. **Appropriate Assessment**

7.13.1. The stream traversing the site feeds into the Donagh River which is about 6km upstream of the Special Protection Area: Trawbreaga Bay SPA and Special Area of Conservation: North Inishowen Coast SAC. Having regard to the nature and scale of the proposed development and the nature of the receiving coastal environment, and proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

7.14. **Other matters**

7.14.1. As this proposal relates to 153 sq.m. of additional floor space a financial contribution may apply, accordingly a condition of permission should provide for this. The conditions in relation to other regulatory measures such as building regulations are not I consider necessary to ensure such standards are applied and should be omitted.

8.0 **Recommendation**

8.1. I recommend that permission be granted subject to amended conditions which include the requirement to upgrade the culvert to an adequate standard that is fit for purpose.

9.0 **Reasons and Considerations**

Having regard to the established nature of the petrol station and retailing premises within the site, to the layout and design of the proposed development and to the

existing pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development as amended and clarified in further information, would not increase the risk of flooding, would be acceptable in terms of drainage, traffic safety and visual amenity and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on 16th October 2018 and on 9th November 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed two storey premises shall be realigned and moved at least 2 metres closer to the public road and the intervening space between the proposed building and road frontage boundary shall be landscaped and shall not be used by vehicular traffic.

Revised site layout and floor plans in accordance with modifications to floor plans and elevations submitted on 16th October 2018 shall be submitted to the planning authority for written agreement prior to commencement of demolition on site.

Reason: In the interest of traffic safety, orderly development and to clarify the scope of the permission.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. In this regard the developer shall satisfy the planning authority that the existing drainage culvert is adequate and fit for purpose and if not shall make any upgrades necessary.

All works shall be agreed in writing prior to the commencement of any demolition work on site and shall be completed prior to commencement of use of the proposed premises.

Reason: To control the risk of flooding and in the interest of public health.

4. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to the commencement of development. This scheme shall include the following:-
- a) Details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.
 - b) Details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development.
 - c) A landscaping scheme which shall include the retention of the grassed area at the southern end of the site, a row of standard trees or hedges along the southern boundary and details of interface with the Stream traversing the site.
 - d) Sustainable Urban Drainage systems.

The boundary treatment, landscaping and maintenance shall be carried out in accordance with the agreed scheme and completed prior to commencement of commercial use of the proposed premises.

Reason: In the interest of the amenity and ecological environment.

5. All lighting shall be in accordance with a lighting scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The lighting serving the site be directed away from adjacent housing and shall be directed and cowled such as to reduce, as far as possible, the light scatter over adjacent houses and gardens. Positioning and design shall also ensure that no glare is caused to users of the public roads in the vicinity of the development.

Reason: In the interest of residential amenity and traffic safety.

6. The demolition works and construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

7. The access and egress width and location and circulation route serving the proposed development, parking areas, directional signage, footpaths and kerbs, shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interests of amenity and of traffic and pedestrian safety.

8. Receptacles for waste shall be provided and available for use at all times on the premises in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To provide for a satisfactory standard of development.

9. No further advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected on the canopy, on the forecourt building or anywhere within the curtilage of the site unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity and in order to allow the planning authority to assess the impact of any such advertisement or structure on the amenities of the area.

10. The noise level shall not exceed 55 dB(A) rated sound level, as measured [at the nearest dwelling] [at the nearest noise sensitive location] or [at any point along the boundary of the site]. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the [residential] amenities of property in the vicinity of the site.

11. Fascia and advertisement signage shall not be in the form of plastic internally illuminated box format and all wording in signage shall include the Irish Language version in a prominent and legible manner. Details shall be submitted for the prior written agreement of the planning authority.

Reason: In the interest of orderly development and development plan policy in respect of the Irish language.

12. Details of the materials, colours and textures of all the external finishes to the proposed building shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

13. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Suzanne Kehely
Senior Planning Inspector

3rd July 2019